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REQUEST FOR PROPOSALS

IN-PLANT TRANSIT VEHICLE INSPECTION SERVICES

RFP 6-071217

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LIST OF ACRONYMS

MHTC	Missouri Highways and Transportation Commission
MoDOT	Missouri Department of Transportation
RFP	Request for Proposals

INTRODUCTION

This Request For Proposals (**RFP**) seeks proposals from qualified organizations (**Offeror, Contractor**) to furnish the described services to the Missouri Highways and Transportation Commission (**MHTC**). One original and six (6) copies of each proposal must be mailed in a sealed envelope to Ms. Leann Kottwitz, Missouri Department of Transportation, Post Office Box 270, Jefferson City, Missouri 65102, or hand-delivered in a sealed envelope to the General Services Procurement Office in the Highway and Transportation Building at 830 MoDOT Drive, Jefferson City, Missouri 65109. Proposals must be returned to the offices of General Services Procurement no later than 2:00 p.m., December 17, 2007.

NOTE: The Offeror must be in compliance with the laws regarding conducting business in the State of Missouri. Within ten (10) business days of notification, the Offeror will need to provide a copy of his/her Missouri Secretary of State's "Certificate of Good Standing" prior to the issuance of any contract or initial purchase order by the Missouri Department of Transportation (MoDOT).

MHTC reserves the right to reject any and all bids for any reason whatsoever. Time is of the essence for responding to the RFP within the submission deadlines.

PROPOSAL

- (1) The Offeror shall provide a fee proposal to MHTC on the **PRICE PAGE** in accordance with the terms of this RFP.
- (2) The Offeror agrees to provide the services at the fees quoted, under the terms of this RFP.

Authorized Signature of Offeror: _____

Date of Proposal: _____

Printed or Typed Name: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Electronic Mail Address: _____

**SECTION (1):
GENERAL DESCRIPTION AND BACKGROUND**

- (A) **Request for Proposal:** This document constitutes a RFP from qualified organizations to provide in-plant transit vehicle inspection services to MHTC and the Missouri Department of Transportation (**MoDOT**).
- (B) **Background:** The Missouri Department of Transportation (MoDOT), Multimodal Operations Division, Transit Section is requesting proposals from qualified individuals or firms to conduct transit vehicle in-plant line inspections of modified and/or purpose built transit vehicles, when the purchase order quantity for a specific floor plan / vehicle type per transit agency (sub-recipient / sub-grantee) meets or exceeds 21 vehicles. The overall goal of these services is to ensure that each vehicle so procured is manufactured in compliance with 49 CFR Part 633, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases".

Subpart C of 49 CFR Part 633 requires a resident inspector at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased, to monitor and complete a report on the manufacture of such rolling stock with the report to minimally include:

- a. Compliance with "Buy America" requirements for at least 60% domestic content and final assembly in the U.S.A., per 49 CFR 663.35 and 49 CFR Part 661;
- b. Compliance with purchaser's requirements (vehicle specifications) per 663.37:
 - (1) Accurate records of all vehicle construction activities,
 - (2) Address how the construction and operation of the vehicle fulfills the vehicle contract specifications,
 - (3) Visual inspection and road testing of the vehicles documented,
- c. Compliance with 49 CFR Part 571 - Federal Motor Vehicle Safety Standards.

The successful Offeror will submit a detailed final report compiled for each such transit vehicle based on the production processes through assembly. The final report shall contain sufficient detail so that the Missouri Department of Transportation, Multimodal Operations Division, Transit Section may determine and certify that each vehicle:

Met post-delivery Buy America Requirements
Met post-delivery purchaser's requirements and,
That the manufacturer has self-certified to FMVSS compliance.

- (C) **Fiscal Year:** The fiscal year runs from July 1-June 30.
- (D) **Contract Period:** January 2, 2008 through January 1, 2009.

- (C) **Fiscal Year:** The fiscal year runs from July 1-June 30.
- (D) **Contract Period:** January 2, 2008 through January 1, 2009.
- (E) **Renewals/Extensions:** The contract shall not bind, not purport to bind, MHTC for any contractual commitment in excess of the original contract period. The MHTC shall have the right, at its sole option, to extend the contract for two (2) additional one-year periods, or a portion thereof. In the event MHTC exercises its options, all terms, conditions, and provisions of the original contract shall remain the same and apply during the extension period. If the options are exercised, the Offeror shall agree the prices stated in the original contract shall not be increased in excess of the renewal periods' pricing, if any, stated on the pricing page of the contract. If the pricing page does not include such renewal prices or if applicable spaces are left blank, are not completed, prices during extension periods shall be the same as during the original contract period. MHTC does not automatically exercise its options based upon the maximum renewal price of increase without documented justification supporting an increase and reserves the right to offer or to request an extension of the contract at a price less than that price derived from the Offeror's renewal amounts.
- (F) **Clarification of Requirements:** Any and all questions regarding specifications, requirements, competitive procurement process, or other questions must be directed to Leann Kottwitz, Missouri Department of Transportation, P. O. Box 270, Jefferson City, Missouri, 65102, (573) 751-3685 (phone) or Leann.Kottwitz@modot.mo.gov (Email.) All written questions must be addressed to Leann Kottwitz no later than **10:00 a.m., CST, November 27, 2007**. Once all the questions are gathered, MoDOT will issue an addendum and post the responses to all questions on-line for Offeror to retrieve. It is the responsibility of the Offeror to retrieve any and all addendums on-line.
- (G) **RFP Schedule Of Events:** The following RFP Schedule of Events represents MoDOT's best estimate of the schedule that shall be followed. Unless otherwise specified, the time of day for the following events shall be between 7:30 am and 4:00 pm, Central Standard Time.

MoDOT reserves the right at its sole discretion to expand this schedule, as it deems necessary, without any notification except for the deadline date for submitting a bid.

Event	Date	Time
MoDOT Issues RFP	November 19, 2007	10:00 am (CST)
Deadline for Written Comments	November 28, 2007	10:00 am
Deadline for MoDOT Issuing Responses to Written Comments	December 4, 2007	10:00 am
Deadline for Submitting a Proposal	December 17, 2007	2:00 pm
Recommendation of Award	December 21, 2007	2:00 pm
Contract Effective Date	January 2, 2008	2:00 pm

SECTION (2): SCOPE OF WORK

- (A) **Services:** The Offeror shall provide the following professional services:
In-plant Transit Vehicle Inspection Services
- (B) **Specific Requirements:** The Offeror will provide to the General Services Procurement Unit one original and six (6) copies of a program proposal which will include the following:
- I. The Offeror will become thoroughly familiar with the transit vehicle specifications prior to the pre-production and pre-inspection meetings, paying particular attention to details and areas of concern based on shared MoDOT experiences, Missouri's transit operators' fleet use, maintenance and inspection experience. The review will include all pre-contractual published amendments and addenda as well as post-award technical correspondence and agreements. Based on this review, a master resolution document will be developed and presented to MoDOT prior to the pre-production meeting.
 - II. During the pre-production meetings at the manufacturing site, the resident inspector and the MoDOT project manager will meet the manufacturer's pre-production manager and project engineer to ensure that the products to be used in vehicle assembly and the methods of construction meet or exceed vehicle specifications as well as applicable standards such as ADA, FMVSS, etc.
 - III. The actual forms and checklist used by the resident inspector for vehicles inspected pursuant to this contract will be finalized after review of the technical specifications, resolution documents and pre-production meetings,

- IV. The inspector(s) shall be on hand at the manufacture's plant(s) for inspection of initial bus sub-assemblies, components and completed main structures. This initial line-fill period is critical for identification, documentation and correction of non-compliant and subjective communications to expedite manufacturer quality.
- V. The inspector(s) will meet daily with appropriate MoDOT staff, daily if needed, to clarify and resolve noted discrepancies and issues.
- VI. The resident inspector(s) will maintain inspection records for each transit vehicle, including descriptions of rejected articles and resolution of identified deficiencies.
- VII. The resident inspector(s) will detect and promptly ensure the correction of any condition that might result in the production of a deficient vehicle system or assembly. Review and comment on manufacturer's change of any part, assembly, or equipment, particularly as it may affect compliance with specifications, applicable standards, systems longevity, and/or maintenance costs.
- VIII. Review and comment on all change order requests.
- IX. Observe the manufacturer's inspection of the transit vehicles and their sub-assemblies and the monitoring of tests.
- X. Conduct transit vehicle final inspection and pre-delivery testing:
 - a. Post-delivery Buy America domestic content and assembly location,
 - b. Visual conformance to specifications / purchaser's requirements,
 - c. Verification of manufacture's self-certification to applicable FMVSS,
 - d. Water test,
 - e. Road test,
- XI. Authorize release of each transit vehicle for shipment upon approval of all necessary corrections.
- XII. Bi-weekly written reports to MoDOT Transit Section shall include weekly activity reports for the inspections at each plant, a chart listing the progress of each coach, hours of inspection service provided and highlights and/or concerns for the two-week period.
- XIII. Monthly written reports to be submitted to the MoDOT Transit Section that address, but not be limited to:
 - a. Status of the Project Budget, to be expressed in terms of dollar amount and the percentage of budget remaining,
 - b. Current number of vehicles inspected and the number of vehicles delivered to the Offeror/dealer,
 - c. Project Status, for each project, to include the daily inspector's production reports as well as the On-Line inspector's summation of these reports.
 - d. Project status overview,
 - e. General overall comments

- XIV. Provide MoDOT's Transit Section with an e-mail address for the on site in-plant inspector and a telephone or cell phone number for communication information purposes.
- XV. Work as a liaison between the vehicle manufacturer, Offeror/dealer and MoDOT's Transit Section.

(C) Administration of Program: The Offeror will consult MHTC's representative regarding any problems involved with the administration of the services provided pursuant to this RFP.

SECTION (3): AGREEMENT REQUIREMENTS

This RFP shall be governed by the following contract provisions. The award of this RFP is subject to a post-award negotiated contract. These same contract provisions will appear in the post-award negotiated contract. If the parties are unable to agree to terms in the post-award contract, MHTC shall reserve the right to cancel the award of the RFP and contract and select a different offeror.

- (A) MHTC's Representative:** MoDOT's Multimodal Operations Director is designated as MHTC's representative for the purpose of administering the provisions of the Agreement as defined in Paragraph (E) of this section. MHTC's representative may designate by written notice other persons having the authority to act on behalf of MHTC in furtherance of the performance of the Agreement. The Offeror shall fully coordinate its activities for MHTC with those of the Transit Section, Multimodal Operations Division. As the work of the Offeror progresses, advice and information on matters covered by the Agreement shall be made available by the Offeror to the Transit Section, Multimodal Operations Division throughout the effective period of the Agreement.
- (B) Release to Public:** No material or reports prepared by the Offeror shall be released to the public without the prior consent of MHTC's representative.
- (C) Assignment:** The Offeror shall not assign or delegate any interest, and shall not transfer any interest in the services to be provided (whether by assignment, delegation, or novation) without the prior written consent of MHTC's representative.

- (D) **Status as Independent Contractor:** The Offeror represents itself to be an independent contractor offering such services to the general public and shall not represent itself or its employees to be an employee of MHTC or MoDOT. Therefore, the Offeror shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, or other such benefits or obligations.
- (E) **Components of Agreement:** The Agreement between MHTC and the Offeror shall consist of: the RFP and any written amendments thereto, the Standard Solicitation Provisions and General Terms and Conditions that are attached to this RFP, the proposal submitted by the Offeror in the response to the RFP and the post-award contract agreement signed between the parties. However, MHTC reserves the right to clarify any relationship in writing and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the Offeror's proposal. The Offeror is cautioned that its proposal shall be subject to acceptance by MHTC without further clarification.
- (F) **Amendments:** Any change in the Agreement, whether by modification or supplementation, must be accompanied by a formal contract amendment signed and approved by the duly authorized representative of the Offeror and MHTC.
- (G) **DBE/WBE Participation Encouraged:**
1. Bidders are encouraged to submit copies of existing affirmative action programs, if any. Bidders are also encouraged to directly hire minorities and women as direct employees of the bidder. MHTC reserves the right to consider the use of minority and female employee when making the award of the Agreement.
 2. Regardless of which persons or firms, if any, that the Offeror may use as subcontractors, subconsultants, or suppliers of goods or services for the services to be provided, the Offeror ultimately remains responsible and liable to MHTC for the complete, accurate and professional quality/performance of these services.
- (H) **Nondiscrimination:** The Offeror shall comply with all state and federal statutes applicable to the Offeror relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).
- (I) **Bankruptcy:** Upon filing for any bankruptcy or insolvency proceeding by or against the Offeror, whether voluntarily, or upon the appointment of a receiver, Offeror, or assignee, for the benefit of creditors, MHTC reserves the right and sole discretion to either cancel the Agreement or affirm the Agreement and hold the Offeror responsible for damages.
- (J) **Law of Missouri to Govern:** The Agreement shall be construed according to the laws of the state of Missouri. The Offeror shall comply with all local, state and federal laws and regulations relating to the performance of the Agreement.

- (K) **Cancellation:** MHTC may cancel the Agreement at any time by providing the Offeror with written notice of cancellation. Should MHTC exercise its right to cancel the Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Offeror.
- (L) **Venue:** No action may be brought by either party concerning any matter, thing or dispute arising out of or relating to the terms, performance, nonperformance or otherwise of the Agreement except in the Circuit Court of Cole County, Missouri. The parties agree that the Agreement is entered into at Jefferson City, Missouri, and substantial elements of its performance will take place at or be delivered to Jefferson City, Missouri, by reason of which the Offeror consents to venue of any action against it in Cole County, Missouri.
- (M) **Ownership of Reports:** All documents, reports, exhibits, etc. produced by the Offeror at the direction of MHTC's representative and information supplied by MHTC's representative shall remain the property of MHTC.
- (N) **Confidentiality:** The Offeror shall not disclose to third parties confidential factual matters provided by MHTC's representative except as may be required by statute, ordinance, or order of court, or as authorized by MHTC's representative. The Offeror shall notify MHTC immediately of any request for such information.
- (O) **Nonsolicitation:** The Offeror warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Offeror, to solicit or secure the Agreement, and that it has not paid or agreed to pay any percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, MHTC shall have the right to annul the Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
- (P) **Conflict of Interest:** The Offeror covenants that it presently has no actual conflict of interest or appearance of conflict of interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services under this Agreement. The Offeror further covenants that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in this Agreement.
- (Q) **Maintain Papers:** The Offeror must maintain all working papers and records relating to the Agreement. These records must be made available at all reasonable times at no charge to MHTC and/or the Missouri State Auditor during the term of the Agreement and any extension thereof, and for three (3) years from the date of final payment made under the Agreement.
1. MHTC's representative shall have the right to reproduce and/or use any products derived from the Offeror's work without payment of any royalties, fees, etc.

2. MHTC's representative shall at all times have the right to audit any and all records pertaining to the services.

(R) Indemnification: The Offeror shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Offeror's performance of its obligations under this Agreement.

(S) Applicable FTA Procurement Terms & Conditions:

No Federal Government Obligations to Third Parties: The contractor agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any grant sub-recipient, any third party contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of the contract. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, sub-agreement, or third party contract, the Federal Government has no obligations or liabilities to any party, including any grant sub-recipient or any third party contractor.

False or Fraudulent Statements or Claims: The contractor acknowledges and agrees that: (1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the grant funded project and this procurement. Accordingly, by executing the contract, the contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with this procurement. In addition to other penalties that may apply, the contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to MoDOT and/or the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the contractor to the extent the Federal Government deems appropriate.

(2). If the contractor makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized for 49 U.S.C. section 5307, the Government reserves the right to impose on the contractor the penalties of 18 U.S.C. section 101 and 49 U.S.C. section 5307 (n)(1), to the extent the Federal Government deems appropriate.

Access to Third Party Contract Records: The contractor agrees to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, access to all records as requested to conduct audits and inspections related to any contracts that have not been awarded on the basis of competitive bidding for a capital or improvement Project, as required by 49 U.S.C. section 5325 (a). The contractor further agrees to provide sufficient access to procurement records as needed for compliance with Federal regulations or to assure proper Project management as determined by FTA.

Federal Laws and Regulations: Federal law or laws authorizing project grant approval control project implementation. The contractor acknowledges that Federal laws, regulations, policies,

and related administrative practices applicable to the grant funded project on the date the authorized FTA official signs the grant agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when a grantee executes the Grant Agreement and might apply to that Grant Agreement. The contractor agrees that the most recent of such Federal requirements will govern the administration of the grant funded Project at any particular time, unless FTA issues a written determination otherwise. FTA's written determination may be issued as a Special Condition, Requirement, or Provision or Condition of Award within the Grant Agreement, a change to an FTA directive, or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a specific provision to the grant Master Agreement. To accommodate changing federal requirements, the contractor is notified that Federal requirements may change and the changed requirements will apply to the grant funded project and procurement as required, unless the Federal Government determines otherwise.

Civil Rights. The contractor agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:

Nondiscrimination in Federal Transit Programs. The contractor agrees to comply, and assures the compliance of each sub-contractor at any tier under this grant funded procurement, with the provisions of 49 U.S.C. section 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age and prohibits discrimination in employment or business opportunity.

Nondiscrimination - - Title VI of the Civil Rights Act. The contractor agrees to comply with the requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. section 2000d et seq., and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - - Effectuation of Title VI of the Civil Rights Act, "49 C.F.R. Part 21, and any implementing requirements the FTA may issue.

Equal Employment Opportunity. The contractor agrees to comply with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. section 2000e, and 49 U.S.C. sections 5332 and any implementing requirements FTA may issue. Those equal employment opportunity (EEO) requirements include by are not limited to, the following:

General Requirements. The contractor agrees a follows:

The contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor also agrees to comply with any implementing requirements FTA may issue

Nondiscrimination on the Basis of Sex. The contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. sections 1681 et seq., with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex

in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25, and with any implementing directives that U.S. DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.

Nondiscrimination on Basis of Age. The contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. sections 6101 et seq., and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.

Access Requirements for Persons with Disabilities. The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. section 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. sections 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that ACT. In addition, the contractor agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- (1) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance”, 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission. “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F, and;

- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
- (11) Any implementing requirements FTA may issue.

Access to Services for Persons with Limited English Proficiency. The contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. section 2000d-1 note, and U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Federal Register 6733 et seq., January 22, 2001.

Environmental Justice. The contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. section 4321 note.

Other Nondiscrimination Statutes. The contractor agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to this contract.

Incorporation of Federal Transit Administration (FTA) Terms – The provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Missouri Highways and Transportation Commission and, or MoDOT request which would cause the Missouri Highways and Transportation Commission and, or MoDOT to be in violation of the FTA terms and conditions.

Government-wide Debarment and Suspension – Executive Order 12549, as implemented by 49 CFR Part 29, prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC 1601, et seq.] – Contractors who apply, propose or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying

contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Clean Air – (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Clean Water – (1) The Contractor agrees with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA office. (2) The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Fly America. The contractor understands and agrees that MoDOT and the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the contract unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. section 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. sections 301-10.121 through 301-10.143.

Employee Protections - - Non-construction. The contractor agrees to comply with employee protection requirements for non-construction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. sections 327 – 332, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards provisions Applicable to Non-construction contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

Energy Conservation. The contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C sections 6321 et seq.

Federal Changes. The contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (13) dated October, 2006) between Purchaser and FTA , as they may be amended or promulgated from time to time during the term of this contract. Applicant's failure to so comply shall constitute a material breach of this contract.

(T) 49 CFR Part 20--Certification Regarding Lobbying:

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**
LOWER TIER COVERED TRANSACTIONS (Third Party Contracts over \$100,000).

Instructions for Certification

- 1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, MoDOT may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to MoDOT if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact MoDOT for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by MoDOT.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration. (<http://epls.arnet.gov>)
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, MoDOT may pursue available remedies including suspension and/or debarment.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION**

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

**SECTION (4):
PROPOSAL SUBMISSION INFORMATION**

(A) SUBMISSION OF PROPOSALS

1. **Pricing and Signature:** Proposals should be priced, signed and returned (with necessary attachments) to Leann Kottwitz, as provided in this RFP. Specifically, any form containing a signature line in this RFP and any amendments, pricing pages, etc., must be manually signed and returned as part of the proposal.
2. **Submission of All Data Required:** The Offeror must respond to this RFP by submitting all data required in paragraph (B) below for its proposal to be evaluated and considered for award. Failure to submit such data shall be deemed sufficient cause for disqualification of a proposal from further consideration.
3. **Public Inspection:** The Offeror is hereby advised that all proposals and the information contained in or related thereto shall be open to public inspection and that MHTC does not guarantee nor assume any responsibility whatsoever in the event that such information is used or copied by individual person(s) or organization. Therefore, the Offeror must submit its proposal based on such conditions without reservations.
4. **Clarification of Requirements:** Any and all questions regarding specifications, requirements, competitive procurement process, or other questions must be directed to Leann Kottwitz, Missouri Department of Transportation, P. O. Box 270, Jefferson City, Missouri, 65102, (573) 751-3685 (phone) or Leann.Kottwitz@modot.mo.gov (Email.) All written questions must be addressed to Leann Kottwitz no later than November 28, 2007, 10:00 am. Once all the questions are gathered, MoDOT will issue an addendum and post the responses to all questions on-line for Offerors to retrieve. It is the responsibility of the Offeror to retrieve any and all addendums on-line.

(B) EVALUATION CRITERIA AND PROCESS

1. **Evaluation Factors:** Any agreement for services resulting from this RFP shall be awarded to the Offeror providing the best proposal to MHTC. After determining responsiveness, proposals will be evaluated in accordance with the following criteria:
 - (A) Years of experience doing on-site in-plant transit vehicle inspections of the individual(s) as assigned by the firm to MoDOT
(30) pts. Maximum
 - (B) References, staff capabilities (Would this not be close to (A) above. Do we need this category as well?)
(20) pts. Maximum

- (C) Conformance to Requirements
(20) pts. Maximum
- (D) Years of experience of the firm in conducting on-site in-plant transit vehicle inspection services
(20) pts. Maximum
- (E) Cost, Fees & Expenses
(10) pts. Maximum

(C) REQUIRED ELEMENTS OF PROPOSAL

1. **Years of experience doing on-site in-plant transit vehicle inspections of the individual(s) as assigned by the firm to MoDOT-** The qualifications (expertise) of the personnel proposed by the Offeror to perform the requirements of the RFP will be considered in the evaluation. Therefore, the Offeror should submit detailed information related to the expertise and qualification of the staff proposed. The Offeror should provide a resume including referenced detailing educational qualifications and previous work assignments as they may relate to this RFP for key personnel to be assigned to the project.

If the staff is not yet hired, the Offeror should provide:

1. detailed descriptions of the required employment qualifications, and
 2. detailed job descriptions of the positions to be filled, including the type of individuals proposed to be hired.
2. **Conformance to requirements** - Conformance to technical and regulatory requirements set forth in the RFP documents. Detail how your organization will comply to the specifications listed in the Scope of Work, along with relationships and working partnerships with subcontractors.
3. **Years of experience of the firm in conducting on-site in-plant transit vehicle inspection services** - Experience of the Offeror's organization is considered in the evaluation process. Therefore, the Offeror is advised to submit any information, which documents successful and reliable experience in past performances, especially those performances related to previous In-plant Transit Vehicle Inspection Services.
 - (a) The Offeror should provide the following information related to previous and current contracts which are considered identical or similar to the requirements of this RFP.

1. Name, address and telephone number of contracting agency and a contact person who may be contacted for verification of all data submitted.
 2. Dates of the Contract.
 3. A brief, written description of the specific prior services performed and requirements thereof.
4. **Cost, Fees & Expenses** - The objective evaluation of cost shall be conducted based upon a total annual amount for all services.
- (a) Cost points shall be determined using a scale of (10) possible points and the following formula:
- $$\frac{\text{Lowest Responsive Price}}{\text{Compared Price}} \times (10) = \text{Cost score points}$$
5. **Historic Information:** MHTC reserves the right to consider historic information and facts, whether gained from the Offeror's proposal, question and answer conferences, references, or other sources, in the evaluation process.
6. **Responsibility To Submit Information:** The Offeror is cautioned that it is the Offeror's sole responsibility to submit information related to the evaluation categories and that MHTC's representative is under no obligation to solicit such information if it is not included with the Offeror's proposal. Failure of the Offeror to submit such information may cause an adverse impact on the evaluation of the Offeror's proposal.

(D) PRICING

1. **Fee Schedule:** The Offeror must submit a proposed fee for all services defined in the Scope of Work. This fee must be shown on Section (5), Price Page, of this proposal which must be completed, signed and returned with the Offeror's proposal.

**SECTION (5):
PRICE PAGE**

- (A) **FEE SCHEDULE:** The Offeror shall indicate below all fees for providing services in accordance with the provisions and requirements stated herein:

Any applicable cap on out-of-pocket expense also should be noted.

A. Pre-Production meetings, per
inspector, per day; \$ _____

B. In-Plant inspection services, per
inspector, per day \$ _____

- (B) **EXPENSES:** List the nature of expenses for which reimbursement would be sought and the estimated amount of such expenses.

Expenses	Estimated Amount
Miscellaneous (list-attach additional sheet if needed)	
Total	

Signature

Date

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STANDARD SOLICITATION PROVISIONS

- a. The Missouri Department of Transportation (MoDOT) reserves the right to reject any or all bids/quotes/proposals, and to accept or reject any items thereon, and to waive technicalities. In case of error in the extension of prices in the bid/quote/proposal, unit prices will govern.
- b. All bids/quotes/proposals must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- c. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown, within the State of Missouri.
- d. Time of delivery is a part of the consideration and, if not otherwise stated in the solicitation documents, must be stated in definite terms by the Bidder/Offeree and must be adhered to. If time varies on different items, the Bidder/Offeree shall so state.
- e. If providing bids/quotes/proposals for commodities, the Bidder/Offeree will state brand or make on each item. If bidding or proposing other than the make, model or brand specified, the manufacturer's name, model number or catalog number must be given.
- f. **For bids/proposals of \$25,000 or more**, no bids/proposals by telephone, telegram or telefax will be accepted.
- g. The date specified for the returning of bids/quotes/proposals is a firm deadline and all bids/quotes/proposals must be received at the designated office by that time. The Department does not recognize the U.S. Mail, Railway Express Agency, Air Express, or any other organization, as its agent for purposes of accepting proposals. All proposals arriving at the designated office after the deadline specified will be rejected.

GENERAL TERMS AND CONDITIONS

General Performance

- a. This work is to be performed under the general supervision and direction of the Missouri Department of Transportation (MoDOT) and, if awarded any portion of the work, the Contractor agrees to furnish at his own expense all labor and equipment required to complete the work, it being expressly understood that this solicitation is for completed work based upon the price(s) specified and is not a solicitation for rental of equipment or employment of labor by MoDOT, and MoDOT is to have no direction or control over the employees used by the Contractor in performance of the work.

Deliveries

- a. Unless otherwise specified on the solicitation documents or purchase order, suppliers shall give at least 24 hours advance notice of each delivery. Delivery will only be received between the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday. Material arriving after 3:00 p.m. will not be unloaded until the following workday. No material will be received on Saturday, Sunday or state holidays.
- b. If the prices bid herein include the delivery cost of the material, the Contractor agrees to pay all transportation charges on the material as FOB - Destination. Freight costs must be included in the unit price bid and not listed as a separate line item.
- c. Any demurrage is to be paid by the Contractor direct to the railroad or carrier.

Nondiscrimination

- a. The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. All solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of the Contractor's obligations under this contract and the Regulations, will be relative to nondiscrimination on the grounds of race, color, or national origin.
 - 1) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MoDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - i. withholding of payments to the Contractor under the contract until the Contractor complies, and/or,
 - ii. cancellation, termination or suspension of the contract, in whole or in part.

Contract/Purchase Order

- a. By submitting a bid/quote/proposal, the Bidder/Offeree agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Contractor's proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or bid by purchase order or post-award contract.
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Contractor must receive a properly authorized purchase order and/or notice to proceed.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

Subcontracting

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by documentation showing that the organization which will perform the work is particularly experienced and equipped for such work.
- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the

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production and delivery of the contracted work and the completion of the work within the specified time.

- c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

Invoicing and Payment

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Federal Excise Tax Exemption Certificate will be furnished to the successful Bidder/Offeror upon request.
- b. Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.
- d. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the Contractor's expense.
- e. The MHTC reserves the right to purchase goods and services using the state-purchasing card.

Applicable Laws and Regulations

- a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor may be required to submit to MoDOT a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
 - 1) Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Contractors **providing services** within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
- c. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.

Executive Order

- a. The Contractor shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6th) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement.
 - 1) "By signing this Agreement, the Contractor hereby certifies that any employee of the Contractor assigned to perform services under the contract is eligible and authorized to work in the United States in compliance with federal law."
 - 2) In the event the Contractor fails to comply with the provisions of the Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.
 - 3) The Contractor shall include the provisions of this paragraph in every subcontract. The Contractor shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Remedies and Rights

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the MHTC of any existing or future right and/or remedy available by law in the event of any claim by the MHTC of the Contractor's default or breach of contract.
- b. The Contractor agrees and understands that the contract shall constitute an assignment by the Contractor to the MHTC of all rights, title and interest in and to all causes of action that the Contractor may have under the antitrust laws of the United States or State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or produced by the Contractor in the fulfillment of the contract with the MHTC.
- c. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MoDOT to enter into such litigation to protect the interests of the MHTC, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Cancellation of Contract

- a. The MHTC may cancel the contract at any time for a material breach of contractual obligations or for convenience by providing the Contractor with written notice of cancellation. Should the MHTC exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Contractor.
- b. If the MHTC cancels the contract for breach, the MHTC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the MHTC deems appropriate and charge the Contractor for any additional costs incurred thereby.

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Bankruptcy or Insolvency

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assigned the benefit or creditors, the Contractor must notify MoDOT immediately. Upon learning of any such actions, the MHTC reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Contractor responsible for damages.

Inventions, Patents, and Copyrights

- a. The Contractor shall defend, protect, and hold harmless the MHTC, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

Inspection and Acceptance

- a. No equipment, supplies, and/or services received by MoDOT pursuant to a contract shall be deemed accepted until MoDOT has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The MHTC reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The MHTC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MHTC may have.

Warranty

- a. The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by MoDOT, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the MHTC's acceptance of or payment for said equipment, supplies, and/or services.

Status of Independent Contractor

- a. The Contractor represents itself to be an independent Contractor offering such services to the general public and shall not represent itself or its employees to be an employee of the MHTC. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the MHTC, its officers, agents and employees harmless from and against any and all losses (including attorney fees) and damage of any kind related to such matters.

Indemnification

- a. The Offeror shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Offeror's performance of its obligations under this Agreement.